

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 681 OF 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

DILIPBHAI SHANTILAL SHAH

VERSUS

MINABEN J SHAH

Appearance:

MR SM SHAH for the Petitioner

None present for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. Heard learned counsel for the petitioner.

#. The challenge has been made to the order of the City Civil Court, No.12, Ahmedabad dated 29/3/95 under which the application filed by the petitioner for calling the wife of Ashwankumar Gunvantlal Kinkhabwala for her examination in the proceedings initiated by petitioner for recalling of the order dated 24/4/94 passed under Section 24 of Hindu Marriage Act, 1956 granting interim maintenance to the wife-respondent came to be rejected. Leaving apart whether this order is revisable or not I am not constrained to observe that it is wholly a frivolous revision application filed by the husband-petitioner before this court. The wife-respondent filed H.M.P. No.177/92 for the restitution of conjugal rights. She filed an application under Section 24 of the Hindu Marriage Act, 1956 for grant of interim maintenance as well as cost of litigation. After notice to the petitioner-husband, this application was came to be granted on 12/4/94. The learned Trial Court granted Rs.400/- p.m. as interim maintenance and Rs.2,000/towards litigation expenses to the respondent-wife. The petitioner has not complied with this order. Meaning thereby he has not paid the amount of maintenance as well as cost of the litigation expenses and the wife-respondent filed application at Exh.51 to the court praying therein to make an order upon the petitioner to deposit in the court the amount of the arrears payable till that day. The petitioner after receipt of the notice of that application has not deposited the arrears of the maintenance amount and costs of the litigation expenses but he filed an application praying therein for recalling of the order dated 12/4/94 on the ground that the wife has married to one Shri Ashwinkumar Gunvantlal Kinkhabwala. To prove this fact he filed an application for examination of the wife of Ashwinkumar Gunvantlal Kinkhabwala i.e. his first wife.

#. The learned Trial Court has rightly rejected the application of the petitioner. It cannot be said to be a case decided. Otherwise also the learned Trial Court has not committed any error of jurisdiction in passing the impugned order. The petitioner has not challenged the order dated 12/4/94. This application though I am not expressing any final opinion for recalling of order dated 12/4/94 filed by the petitioner, prima facie appears not to be bonafide. To deprive the lady the maintenance this application appears to have been filed. This is not the stage where all these questions as what are sought to be raised are to be decided.

#. The learned Trial Court is right in its approach that

if such type of applications are to be decided after taking oral evidence of the witnesses of the parties after calling them such application can never come to an end. It is really shocking that instead of paying maintenance and seeing that expeditiously Hindu Marriage Petition is disposed of, the husband is making all the efforts to deprive the lady maintenance and final disposal of the petition. The Hindu Marriage Petitioners are to be decided within six months from the service of the summons to the other side but more than 7 years have been passed and this Hindu Marriage Petition is pending at the stage where even the matter under Section 24 of the Act has not been permitted to attain finality by the husband.

#. In the result, the civil revision application fails and the same is dismissed. As none put appearance for the respondents, no order as to cost. Rule discharged. Interim relief granted by this court stands vacated. The court below is directed to dispose of finally the Hindu Marriage Petition No.177/92 within a period of three months from the date of the receipt of the writ of this order.

(S.K.Keshote, J.)

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